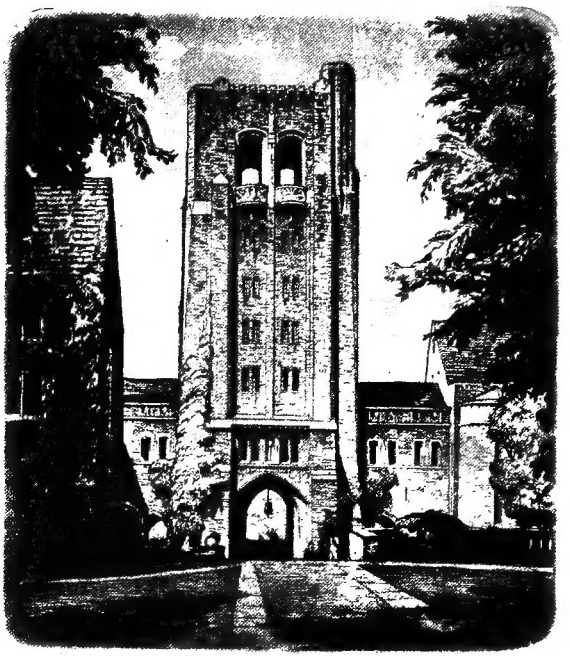

BRAMWELLIANA;

OR,

WIT AND WISDOM

OF

LORD BRAMWELL.

BY

EDWARD MANSON.

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

LONDON:

WILLIAM CLOWES AND SONS, LIMITED,

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WIT AND WISDOM

OF

LORD BRAMWELL.

So Dry.

The law is so dry. I deny it. . . . Of the four volumes of "Blackstone's Commentaries" three, to my mind, are most agreeable reading.

Special Pleading.

My judgment is certainly not influenced by any love of the old system of special pleading, which for a quarter of a century I did my best to get rid of. But at all events it was logical.—*Hall* v. *Eve* (4 Ch. Div. 346).

Individualism.

Please govern me as little as possible.

The Invention of "Limited."

"Mention it in my life," he said jocularly.—*Times' Memoir.*

Breach of Promise Actions.

I cannot help thinking that these are actions which ought not to be encouraged. If people change their minds it is better that they should do so before marriage than when it is too late.—(41 *L. T. N.* 71.)

Maule, J., on "Drink."

Drink—yes, drink! I mean by that, drink which cheers and, if you take too much, inebriates—drink as Mr. Justice Maule understood it, when he was asked by the bailiff who had sworn to give the jurymen "no meat or drink," whether he might give a juryman some water; "Well," said the judge, "it is not meat, and I should not call it drink—yes, you may."

Hard Cases.

My strong belief is that the law does not create hard cases.—(5 Ch. Div. 31.)

A Solicitor's Business.

The business of a solicitor was like that of a doctor. A doctor had to keep them in health, a solicitor had to keep them out of law.—(5 Ch. D. 958.)

A Jury's Reasons.

If juries had to give reasons for their verdict, trial by jury would not last five years.—*Dunkirk Colliery Co.* v. *Lever* (9 Ch. Div. 28).

Leave to Amend.

I have had much to do in Chambers with applications for leave to amend, and I may perhaps be allowed to say that this humble branch of learning is very familiar to me. My practice has always been to give leave to amend, unless I have been satisfied that the party applying was acting *malâ fide*, or that by his blunder he had done some injury to his opponent which could not be compensated for by costs or otherwise.—*Tildesley* v. *Harper* (10 Ch. Div. 396).

Hypothetical Cases.

I protest against having to answer all these possible cases.—*Att.-Gen.* v. *Charlton* (2 Ex. Div. 409).

Legal Fraud.

I am of opinion that to make a man liable for fraud moral fraud must be proved against him. I do not understand legal fraud. To my mind it has no more meaning than legal heat or legal cold, legal light or legal shade.—*Weir* v. *Best* (3 Ex. Div. 243).

Nine Points of the Law.

It is a most convenient thing that every supposition not wholly irrational should be made in favour of long continued enjoyment.—*Mayor of Penryn* v. *Best* (3 Ex. Div. 299).

Definitions.

Definitions are always dangerous. — *Davies* v. *McVeagh* (4 Ex. Div. 268).

A very Good Impression.

One day I was sitting in my chambers when there came a shagbag attorney with a brief for Maidstone, Platt to lead me. In the course of the case the counsel on the other side raised an objection; Platt answered the point, indifferently, and the judge thought so. I whispered something to Platt, and found myself on my legs, giving my answer. "Oh, that is quite a different matter, Mr. Platt," said the Judge, satisfied and convinced; and I sat down, having made a very good impression. I thought briefs would be showered upon me, but they were not—that attorneys would be at my chambers when I returned, but they were not. Still, from that time, somehow, I never looked back.

A Truism.

A notice to quit should be clear and certain in its terms (*Woodfall*). Of course it ought, and so ought everything else.—*Ahearn* v. *Bellman* (4 Ex. Div. 205).

The Mystic Seven.

My doubt is whether it can be the law that if six partners carried on the trade of hatters they might agree to deal in boots, but that if seven associate themselves in a registered company as hatters their dealing in boots is not only *ultra vires* but unlawful—an offence possibly punishable.—(11 Ch. Div. 502.)

Popularis aura.

On one occasion some observation in a charge to a jury was received with applause. The judge paused a moment, and then said quietly: "I recall those words, I must have been saying something foolish."—(27 *Law Journal*, 317.)

Keep your Seats.

A person travelling on a railway is taken to some place where he ought not to have been taken, beyond a platform for instance. He jumps out, risking the danger, and hurts himself. In my opinion in such a case as that he ought to have no remedy against the company for the hurt. What he must do is to sit in the carriage and be carried on beyond where he wants to go, and then bring his action against the company for not affording him proper accommodation to get out. —*Lax* v. *Corporation of Darlington* (5 Ex. Div. 35).

Bar and Bench.

It has been said that Lethe often runs between the Bench and the Bar, but if so it certainly was to me a very narrow stream.

Colourable Variation in Ritualistic Practices.

For instance, take the case of profane swearing in a church, it is inconceivable that a man could avoid the

effect of a monition by simply varying the oaths and imprecations of which he made use.—*Enraght* v. *Lord Penzance* (7 App. Cas. 256).

Libel — Innuendo — Notice refusing Payment in Cheques drawn on particular Bank.

I think the defamer is he who of many inferences chooses a defamatory one.—*Capital & Counties Bank* v. *Henty* (7 App. Cas. 792).

Take the case which I put. The plaintiff's manager is asked to take a glass of beer and refuses, saying that he never drinks Henty's beer. A possible inference is that it is bad beer. Is that actionable?—(*Ibid.* 793.)

Pledging Husband's Credit.

Certainly, the Court cannot take judicial notice of a practice by wives to pledge their husbands' credit for dresses, and I sincerely hope it is not their practice to do so.—*Debenham* v. *Mellon* (5 Q. B. Div. 399).

Have you your Husband's Authority, Ma'am?

It is argued that if a tradesman were to ask this question he would offend his customers. The wife would not deal with him again, and the husband also might be annoyed that his wife's word had been doubted. This may be a reason why the tradesman should not ask the question, but it is no reason why, if he does not, he should hold the husband liable when the latter has not consented that a debt should be contracted.—(*Ibid.* 400.)

The Claimant's Grievance.

The next point I understand to be this: The plaintiff in error has been sentenced to seven years penal servitude upon each count; but he ought, in addition to

that, to have been sentenced to some amount of fine and imprisonment. I very much doubt whether he has any right to make such a complaint. He cannot say that any wrong has been done him. The utmost that he can say is that he has not had sufficient punishment awarded to him, and I very much doubt whether error will be at the suit of the person indicted under these circumstances.—*The Queen* v. *Castro* (5 Q. B. Div. 507).

An Unconventional Sentence.

My duty is to pass upon you the sentence of death, and that is my only duty.—(6 *Sol. J.* 61.)

Epithets in Pleading.

The case is not mended by the statement of claim saying that the negligence was "gross." That will not give a cause of action unless negligence not gross will. —*Wilson* v. *Lord Bury* (5 Q. B. Div. 536).

Proverbial Philosophy.

It was said that a proverb was an embodiment of the common sense of mankind. Perhaps it was, but it was the embodiment of their common nonsense also.—*On Commercial Arbitration, Oct.* 1884.

Girding at Acts of Parliament.

I dislike finding fault with statutes. There is nothing so difficult to draft.—*Netherseal Colliery Co.* v. *Boarne* (14 App. Cas. 237).

Directors and their Articles.

There is the customary carelessness and indifference of people who make rules and then put them on one side and go on as if there were no rules at all, but that is all.—*Chapleo* v. *Brunswick Building Society* (6 Q. B. Div. 706).

An Assumption.

Every one knows that a receipt is strictly not evidence, and that the fact of payment must be proved by other means.—*Marsden* v. *Meadows* (7 Q. B. Div. 86).

Libel and Malice.

That unfortunate word, "malice," has got into cases of actions for libel. We all know that a man may be the publisher of a libel without a particle of malice or improper motive.—*Abrath* v. *North Eastern Railway Company* (11 App. Cas. 253-4).

Rules of the Game.

You must not traverse an hypothesis.

Law and Technicality.

Willes, J., said that law without technicality was impossible. I content myself with saying that as long as our law says that a plaintiff to succeed must do so on the *allegata et probata*, the decision must be governed by them and them alone.—*Milnes* v. *Mayor of Huddersfield* (11 App. Cas. 534).

Hold to your Bargain.

It seems to me so utterly wrong when people have entered into a defined bargain, that it should be set aside upon some more or less fanciful notion of equity or right, that I will not discuss it. I will say, "Hold to your bargain." I suppose the proverb is as true in Scotland as it is in England, and truer universally, that a bargain is a bargain, as the Lord Chancellor has said, and should be observed.—*Auld* v. *Glasgow Working Men's Building Society* (12 App. Cas. 203).

Committing an Old Friend.

Once a very old and dear friend of mine provoked me so much and made me so angry that I actually threatened to commit him; and I remember that on my asking him afterwards what he would have done if I had committed him, he answered promptly, "Move for my own discharge."

Collision—a Peril of the Sea.

Is not the chance of being run against by a clumsy rider one of the perils of hunting?—*Wilson* v. *Owners of Xantho* (12 App. Cas. 514).

Cheapen Law.

The great thing to be done, that which they ought all to seek to do, was to cheapen the law—to cheapen the administration of the law.—*On Commercial Arbitration, Oct.* 1884.

High costs are a good thing in stopping a great deal of improper litigation. Yes! so they are, but they also stop a great deal of proper litigation.

Waiting for the Cabman.

As to the argument that the consignees took them voluntarily, no doubt they did so in one sense, just as a man turned out of a hackney cab, instead of being carried to the end of his journey, would probably walk away, though of course he might sit down on a door-step and wait for the cabman to carry him on. No doubt the consignees might have left the goods there, but they took them away because they could not help it.—*Metcalfe* v. *Britannia Ironworks Co.* (2 Q. B. Div. 429).

The Right of Appeal.

An appeal does not exist in the nature of things. A

right to appeal from any decision of any tribunal must be given by express enactment.—*Sandback Charity Trustees* v. *North Staff. Ry.* (3 Q. B. Div. 4).

Summing-up.

A summing-up is not to be rigorously criticised.—*Clark* v. *Molyneux* (3 Q. B. Div. 243).

Reverence for Antiquity.

Buckle said, very truly, that the good done by modern legislation was the repeal of the old.

Estoppels.

Estoppels are odious, and the doctrine should never be applied without a necessity for it.—*Baxendale* v. *Bennett* (3 Q. B. Div. 529, and see 5 Q. B. Div. 202).

American Cases.

The only manner in which an American case can be used as a guide is to consider it as the expression of the opinion of an able person acquainted with the general spirit of our law.—*Bradlaugh* v. *The Queen* (3 Q. B. Div. 621).

Cross-examination.

Then there is the presence of the judge. "Oh!" it is said, "the judge is afraid." I do not remember that feeling.

Non omne quod licet honestum.

This (issuing execution immediately after judgment) is one of those things which is ordinarily regulated by good feeling.—*Smith* v. *Smith* (L.R. 9 Ex. 124).

Railway Fencing and the Pig Trespasser.

The company are bound to put up such a fence that a pig, not of a peculiarly wandering disposition nor under any excessive temptation, will not get through it.—*Child* v. *Hearn* (L.R. 9 Ex. 182).

Progress and Poverty.

It is singular what an acquaintance with the Creator's designs is shown by writers of the stamp of Mr. George.

Flood-water and Self-help.

The law allows what I may term a kind of reasonable selfishness in such matters: it says, "Let everyone look out for himself and protect his own interest," and he who puts up a barricade against a flood is entitled to say to his neighbour who complains of it, "Why did not you do the same?"—*Nield* v. *London and N. W. Railway Co.* (L.R. 10 Ex. 7).

A Circuit Squib.

And Bramwell, blushing with a maiden grace,
Strives to look honest in a jury's face;
While stubborn juries, proof against his wiles,
Pronounce for Nokes, while he appears for Styles.
—*Times' Memoir.*

Statute of Frauds.

It is said this is hard and grossly unjust. No doubt the Statute of Frauds always is in cases where the consideration is executed, as in cases of guarantees for example, and often where the consideration is executory; but the hardship must be borne for the sake of the rule.—*Sanderson* v. *Graves* (L.R. 10 Ex. 238).

Insuring Safety and vis major.

If so, then if a mischievous boy bored a hole in a cistern in any London house and the water did mischief to a neighbour, the occupier of the house would be liable. That cannot be.—*Nichols* v. *Marsland* (L.R. 10 Ex. 259).

The Stimulus of Ownership.

I agree with the late Sir W. Siemens who said, "If an invention lay in the gutter unowned I would give it to a particular owner that someone might have a particular interest to develop and push it."

Runaway Horses.

For the convenience of mankind in carrying on the affairs of life, people as they go along roads must expect or put up with such mischief as reasonable care on the part of others cannot avoid.—*Holmes* v. *Mather* (L.R. 10 Ex. 267).

"Gingerly."

It is a remarkable thing the gingerly way (for I know no other word to use) in which the bill states what they thought it was they were buying.

Private Property.

I have no superstitious reverence for the institution of separate or private property. Show me that its abolition would be for the general good and I would vote for it, letting down the present possessors gently.

Illegal Purpose—The Demimondain and the Brougham.

Put this case. A man buys a pair of duelling pistols from a gunsmith, declaring his intention to be to fight a duel with them. The gunsmith says, "I care not to what purpose you put them; my purpose is simply to sell an article of trade." Is he precluded from recovering the price as having sold for an illegal purpose? (Yes).—*Pearce* v. *Brookes* (4 H. & C. 366).

Chasmore v. Richards.

If a man has the misfortune to lose his spring by his

neighbour digging a well, he must dig his own well deeper.—*Ibbotson* v. *Peat* (3 H. & C. 650).

England and India.

If ever there was an honest government, if ever one nation had cause to be proud of the way it governed another, it is England and its government of India.

Letting Loose Stored Water.

Why is not this a trespass? See *Gregory* v. *Piper* (9 B. &. C. 591). Wilfulness is not material, *Leame* v. *Bray* (3 East 593). Why is it not a nuisance? The nuisance is not in the reservoir, but in the water escaping.—*Fletcher* v. *Reylands* (3 H. & C. 789).

Coke's Advice the Best.

Melius est petere fontes quam sectari rivulos.—*Priestly* v. *Fernie* (3 H. & C. 986).

The Nonsense of the Legislature.

I do not think it desirable for those who have to administer the law to speak disrespectfully of it, a thing, as Lord Coleridge said, more often done as to Acts of Parliament by those who have not had, than by those who have had to do with the framing of them.—*Twycross* v. *Grant* (2 C. P. Div. 496).

A Title for Windings-Up.

Anyone would suppose that winding-up Acts ought to be entitled, "Acts for the more effectual ruin of companies and waste of their assets."—*Twycross* v. *Grant* (2 C. P. Div. 504).

A Dismal Science.

Political Economy has been called a dismal science. It has been called inhuman and unfeeling. The same

epithets might as well be applied to Euclid's Elements, or to a treatise on baking or brewing.

Trying an Action.

An action is not tried by a jury, although they may try issues. An action is tried by the jury finding the facts and the judge deciding the law.—*Collins* v. *Welch* (5 C. P. Div. 32).

Socialism.

Socialism will never do until we are as honest as the bees.—*Speech Liberty Defence League Meeting, Nov.*, 1890.

An Authority.

Which, as Lord Justice James used to say, is an authority though I joined in it.

Grandmotherly Protection.

But besides this, I look upon all those rules, regulations, and provisions (*e.g.* watchman at level crossing), which are made to take care of people when they should take care of themselves, as positively mischievous.—*Stubley* v. *L. N. W. Ry. Co.* (L.R. 1 Ex. 18).

A Case.

He reminds me of the learned counsel who said, "If ever a case was a hard case this case is that case."

This is a desperate point.

An Unsophisticated Mind.

This is one of a class of cases (notice to trustees) with which I am not familiar; . . . . but I am desirous of expressing my opinion upon the case, because I come to consider it with a mind that may be said not to be hardened or sophisticated by familiarity with cases of constructive notice. Coming in that primitive condition——.—(14 Ch. Div. 414.)

Deceased Wife's Sister.

The most enormous paradox in the world to say that the right way for a man and woman to live together without scandal is that they should not be able to marry.

An Inventing Plaintiff or a Forgetful Defendant.

If it were to be laid down that affirmative evidence is always to be believed because the denial of it may arise from defect of memory, it would be like a good many other golden rules, very mischievous in its application.—(14 Ch. Div. 417.)

The "Roguishness" of Equity.

I do not know whether I have grasped the doctrines of Equity correctly in this matter (purchase with notice of unregistered annuity), but if I have, they seem to me like a good many other doctrines of Courts of Equity—the result of a disregard of general principles and general rules in the endeavour to do justice, more or less fanciful, in certain particular cases.—*Greaves* v. *Tofield* (14 Ch. Div. 578).

Differing from Jessel, M.R.

It is quite unnecessary for me to express my very great respect for any opinion of the Master of the Rolls, and I am really surprised at finding I can differ from him with so much confidence as I cannot help feeling on the present occasion.—(14 Ch. Div. 672.)

State Meddling.

Why the Board of Trade was to have a voice in the matter (a railway company granting a lease) I know not. Perhaps it is a bit of that meddling, inspecting legislation of which we have so much.—(11 Ch Div. 507).

A misunderstood Witness.

I have very often seen a witness in the box who was suspected of giving dishonest evidence, when I was satisfied that he had first deceived himself and then honestly come forward to deceive others.

Under the Harrow.

Very few witnesses are candid under cross-examination, civil to the questioner.

Damages.

The contumelious farthing.—(5 Ch. Div. 41.)

Knowing the Law.

A man is not bound to be correct in his statement of the law, though he is bound to be correct in his statement of facts.—(15 Ch. Div. 40.)

Caveat grantor.

I do not think the legislature intended that provision (explaining a bill of sale to the grantor) for the benefit of the grantor. I hope they did not, for I think they have taken a great deal too much care of people who are able to take care of themselves.—(15 Ch. Div. 56.)

A Bargain a Bargain.

Now as regards the other point. With all respect to those who think otherwise, I am of opinion that a bargain is a bargain, and should be observed.

Lord Eldon said that in his time the Court was becoming more and more in the habit of holding people to the contracts they had made. That is what I humbly ventured to think should be the rule.—(14 Ch. Div. 261, 284.)

Landing Passengers.

It would certainly be strange if the captain of a

steamboat were to say he had landed his passengers if he made them get out in three feet of water.—*Harvey* v. *Corporation of Lyme Regis* (L.R. 4 Ex. 264).

Ingratitude and Public Duty.

For though it is easy to say that it is the duty of a patriot if he sees an unfit man aiming at possession of a public post to say he is unfit, this is like gratitude, itself a duty of imperfect obligation, and not such as would necessarily relieve him in its performance from the charge of ingratitude.—*Cox* v. *Lee* (L.R. 4 Ex. 289).

The Ethics of Advocacy.

A man's rights are to be determined by the Court, not by his attorney or counsel. It is for the want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. A client is entitled to say to his counsel, "I want your advocacy not your judgment, I prefer that of the Court."—*Johnson* v. *Emerson* (L.R. 6 Ex. 367).

Printed Charterparties.

In my opinion these printed clauses are very mischievous. If persons who enter into contracts would put down the terms in writing there would be fewer mistakes as to what they really have contracted to do than there are now as to the effect of these printed clauses, which very often neither party take the trouble to read.—*Cross* v. *Pagliano* (L.R. 6 Ex. 14).

An opinion expressed in the hurry of *nisi prius* business.—*White* v. *Hunt* (L.R. 6 Ex. 34).

Engaged or Not.

If a man proposed marriage and the woman was to

consult her friend and let him know, would it be enough if she wrote and posted a letter which never reached him?—*British and American Telegraph Co.* v. *Colson* (L.R. 6 Ex. 118). Yes.—*Henthorn* v. *Fraser* [1892] (2 Ch. 27).

A Rat in the Gutter.

To treat this as evidence of negligence is to say that whenever the world grows wiser it convicts those who come before of negligence.—*Carstairs* v. *Taylor* (L.R. 6 Ex. 222).

Support for Surface from Mineowner.

Suppose a man with a three-storied house sold the materials of the second floor, would he have a right to say, "But you must leave enough to support my third story or you must prop it up?"—*Eadon* v. *Jeffcock* (L.R. 7 Ex. 395).

The State or Laissez-faire.

Suppose my friend and I had to think for each other's wants instead of each for his own, I am afraid I should feed him sometimes when he was not hungry, and he occasionally would put me to bed when I was not sleepy; I should take him for his good to the Liberty and Property Defence League, and he would take me, for mine, to a Social Science Congress, to the edification of neither.

Vive Laissez-faire—Let be.

Piracy.

Suppose an author wrote a book of travels and incidentally described the composition of some favourite dish and then the writer of a cookery manual copied the description, that would not be piracy.—*Bradbury* v. *Hotten* (L.R. 8 Ex. 3).

The Nationalization of the Land.

No doubt to confiscate land and raise the public revenue out of it would be a fine thing for all the community save the landowners. But so would confiscating chattels be a fine thing for all but chattel owners, and the confiscation of labour would be a splendid thing for all but the labourer.

Relief in Equity.

To relieve a man from his obligations (the penalty in a bond) on some supposed equitable considerations seems to me to be a mischievous thing. If relief is required let the legislature interfere. It is there that the remedy must be sought. It is not the function of courts of law to apply it. They have to administer the law as it is, and any attempt on their part to mend it only leads to uncertainty in the administration of justice.—*Preston* v. *Dania* (L.R. 8 Ex. 22).

Conversion.

I have frequently stated that I never did understand with precision what was a conversion.—*Hiort* v. *L. & N. W. Railway Co.* (4 Ex. Div. 205).

Landlord resisting Seizure by the Bill of Sale Holder.

A man is going to fight a duel and goes to a drawer to get one of his pistols. I say to him, "You shall not take that pistol of yours out of the drawer," and hinder his doing so. Is that a conversion of the pistol by me to my own use? Certainly not.—*England* v. *Cowley* (L.R. 8 Ex. 129).

Railway a Public Highway.

A striking remark was made by my brother Cleasby that a railway is a public highway and people may use

it. I know they do not, and I know practically they cannot, and that is why running powers are obtained; but still it is a public highway upon which everybody with properly arranged engines and so forth has a right to go.—*Wright* v. *Midland Railway Co.* (L.R. 8 Ex. 144).

Defamation in Reports of Legal Proceedings.

There are cases where an individual must suffer for the public good.—*Ryalls* v. *Leader* (4 H. & C. 565).

The Uncertainty of the Law.

This is one of those cases which are referred to as showing the uncertainty of the law, whereas they only show the stupidity of people in not taking care to express themselves plainly and make intelligible contracts.—*Woods* v. *Priestner* (4 H. & C. 687).

A Legal Conception.

One mode of enjoying land covered with water is to row boats on it, and the owner has an exclusive right.—*Nuttall* v. *Bracewell* (4 H. & C. 724).

A Suggestion.

Before you ask us to overrule these cases, Mr. X. (*Reg.* v. *Kenrick*, 5 Q. B. 49), had you not better try and distinguish them?—*Reg.* v. *Sherwood* (7 Cox Cr. Cas. 272).

The "mens rea."

It seems to me to be a legitimate conclusion from this argument that if I strike a vigorous blow at a log of wood, supposing it to be a man's head, I should be liable to be convicted of an attempt to commit murder. —*Reg.* v. *McPherson* (7 Cox Cr. Cas. 284).

Making Crimes.

The fewer statutory crimes we have the better.—*Reg.* v. *Evans* (7 Cox C. Cas. 299).

Cease to be a Turnpike.

It really is like the case that Mr. Blair put of a man's hat being knocked off his head, and of a person saying, "You have ceased to wear your hat." In one sense it would be true: you could not say it was a falsity, but it would be a very inaccurate way of describing what had happened.—*JJ. of Lancashire* v. *Mayor of Rochdale* (8 App. Cas. 503).

What's in a Seal.

That (*i.e.*, the observance of certain solemnities and formalities which involve deliberation and reflection) is the importance of the seal. It is idle to say there is no magic in a wafer. It continually happens that carelessness and indifference on the one side, and greed of gain on the other, cause a disregard for these safeguards, and improvident engagements are entered into. —*Young* v. *Mayor of Royal Leamington Spa* (8 App. Cas. 528).

A Mental Defect.

I distrust my opinion in this case; for I cannot see two sides to the question, though there certainly are two, as is shown by the different views taken by the very eminent persons who have considered it.—*Trustees of Clyde Navigation* v. *Laird* (8 App. Cas. 673).

Cuique in sua arte credendum est.

Here is a contract made by a fishmonger and a carrier of fish, who know their business, and whether it is just and reasonable is to be settled by me, who am neither fishmonger nor carrier, nor with any knowledge of their business.—*Manchester S. & L. Ry. Co.* v. *Brown* (8 App. Cas. 716).

My Understanding.

According to my understanding (which, of course, I must act upon, although I may have a sort of general distrust of its value).—*Smith* v. *Chadwick* (9 App. Cas. 202).

What I was busy upon in that case was in showing—.

Company Mongers.

The general public is so at the mercy of company promoters—sometimes dishonest, sometimes over sanguine—that it requires all the protection the law can give it.—*Derry* v. *Peek* (14 App. Cas. 345).

Directors qualified by a Contractor. The quid pro quo.

It is wonderful to me that honest men of ordinary intelligence cannot see the impropriety of this. It is obvious that the contractor can only give this qualification because he means to get it back in the price given for the work he is to do.—*Derry* v. *Peek* (14 App. Cas. 345).

Not a Nautical Expert.

One may hope with care and attention to come to a right conclusion on matters of ordinary every-day life: but this is not such a case. We are not (at least, I am not) familiar with nautical matters, and may go wrong from sheer ignorance.—*The Ceto* (14 App. Cas. 688).

I had many years' practice in special pleading, happily abolished.—*Mills* v. *Armstrong* (13 App. Cas. 11 *n.*).

Cruel only to be Kind.

A learned county court judge once told me that at first he used to make orders of committal for a short time and he found that the people went to prison. He then lengthened the period and he found that fewer

people went to prison, and he found that the longer the period for which he committed people to prison for not paying, the shorter was the total amount of imprisonment suffered by debtors; because when they were committed for the whole six weeks they moved heaven and earth among their friends to get the funds and pay; whereas, if the term was a short one they underwent the punishment.—*Stonor* v. *Fowle* (13 App. Cas. 29).

Railways and the Public.

I make no remark on other authorities beyond this, that they show a generous struggle on the one hand to make powerful companies liable to individuals, and on the other hand, an effort for law and justice. Sometimes one succeeds, sometimes the other, and the cases conflict accordingly.—*Gt. Western Railway Co.* v. *Bunch* (13 App. Cas. 51–2).

Damp Sheets.

If a person asked a visitor to sleep at his house, and the former omitted to see that the sheets were properly aired, whereby the visitor caught cold, he could maintain no action, for there was no act of commission, but simply an act of omission.—*Southcote* v. *Stanley* (1 H. and N. 251).

Shooting a Trespasser.

If a man commits a trespass to land, the occupier is not justified in shooting him.

Negligence.

There is no absolute or intrinsic negligence; it is always relative to some circumstances of time, place, or person.—*Degg* v. *Midland Railway Co.* (1 H. & N. 781).

The Chancellor's Foot.

It is a common opinion that our Courts of Equity deal out justice without being governed by any rules, but in truth they are as much governed by rules as our Courts of Law.—*Stimson* v. *Hall* (1 H. & N. 835).

Nocens respondeat.

I have a great desire in all cases to make the actual wrongdoer alone responsible, and to limit the doctrine of "respondeat superior."—*Collett* v. *Foster* (2 H. & N. 361).

Legal Terminology.

I never hear those unfortunate expressions ("conversion" and "money had and received") without regretting that they were ever adopted.—*Evans* v. *Wright* (2 H. & N. 532).

An extraordinary Storm.

There is a French saying that "there is nothing so certain as that which is unexpected." In like manner, there is nothing so certain as that something extraordinary will happen now and then.—*Ruck* v. *Williams* (3 H. & C. 319).

"You Nasty Slut"—Wife telling Husband.

If I make a slanderous statement to a man and do not desire nor authorise him to repeat it, but, nevertheless, he does so, he ought to do it upon his own responsibility, and I ought not to be liable for the consequences of his wrongful act.—*Parkins* v. *Scott* (1 H. & C. 159).

House for "Public Refreshment."

The place in question was a dancing saloon, and a great many people went there. Some danced, others

did not; some had beer, others had not; some danced and had beer, others had beer and did not dance; but those who wanted beer gave the money to one of the defendants to fetch it. That being so, I am of opinion that this was not a house kept open for "public refreshment."—*Taylor* v. *Oram* (1 H. & C. 379).

How can we say that what people find the best mode of conducting their business is unreasonable?—*Lawson* v. *Burness* (1 H. & C. 404).

Guessing the Legislature's Mind.

A judge discussing the meaning of a statute in a court of law should deal with it as a lawyer and look at its words. If he disregards them and decides according to its maker's supposed intent, he may be substituting his for them, and so legislating.—*Att.-Gen.* v. *Sillem* (2 H. & C. 537).

A Tribute to American Lawyers.

I concur in the eulogium which the Attorney-General passed on American legislation and American judges in this matter. An English lawyer must rejoice to see that those who administer in America a law, in great part our common inheritance, administer it on the same fearless and honest principles as those on which I venture to say law is administered here.—*Att.-Gen.* v. *Sillem* (2 H. & C. 540).

Serving a Writ.

If the clerk had presented the writ to the Aldgate pump he might as well say that he had made reasonable efforts to effect personal service.—*Flower* v. *Allan* (2 H. & C. 694).

The "One Judge System."

I will not be tempted to discuss the "one judge system" at length. It is the law and we must act on that while it so continues. But I wholly approve it.

Cockburn and the Cause List.

Chief Justice Cockburn indeed, who liked a page of the *Times* daily devoted to him and his performances, picked out of the general list cases which would afford him that gratification; but no other chief ever did.

A fellow Member of the Political Economy Club indulges in tirades against the House of Lords as composed of Idlers.

If what he says of us be true, I am not fit to be a member here, and if it isn't, he is not fit.—*Times' Memoir.*

Laconic Law.

Bramwell, B. (*exhorting culprit to repent and amend*): "You have been convicted——"

Prisoner (*interrupting*): "How much?"

Bramwell, B.: "Nine months."

A Court of Criminal Appeal.

I have the strongest possible opinion to the contrary (*i.e.* against a Court of Criminal Appeal).

The Limits of Judicial Knowledge.

A judge is not bound to know the ingredients which constitute peroxide of iron.—*Hill* v. *London Gas Light Co.* (5 H. & N. 345).

Costs.

Costs, as between party and party, are given by the law as an indemnity to the person entitled to them. They are not imposed as a punishment on the party

who pays them, nor given as a bonus to the party who receives them.—*Harold* v. *Smith* (4 H. & N. 385).

Affiliation.

In these cases the man is very much at the mercy of the woman, and therefore it is provided that her testimony shall be corroborated.—*Hodges* v. *Bennett* (5 H. & N. 627).

Reasonableness.

Reasonableness is not a question of law, but a mixed question of law and fact, depending on the particular circumstances of each case.—*Beal* v. *South Devon Railway Co.* (5 H. & N. 885).

Reasonableness is a relative term.—(*Ibid.* 886.)

Only Evidence.

It should be borne in mind that a written contract not under seal is not the contract itself, but only evidence—the record of the contract.—*Wake* v. *Harroh* (6 H. & N. 775).

Equities of Redemption.

Whether it would not have been better to have held people to their bargains and taught them by experience not to make unwise ones, rather than relieve them when they had done so, may be doubtful. But piety or love of fees of those who administered equity has thought otherwise.—*Salt* v. *Marquess of Northampton* [1892] (A. C. 19).

The Advantages of Competition.

There are some people who think the public is not concerned with this—people who would make a second railway by the side of one existing, saying, "only the two companies will suffer," as though the wealth of the

community was not made up of the wealth of the individuals who compose it.—*Mogul Steamship Co.* v. *McGregor* [1892] (A. C. 46).

Political Economy.

For nearly two-thirds of a century I have been trying to learn something about it.

Judicial Gifts.

I cannot see why judges should be specially gifted with prescience of what may hamper or what may increase trade, or of what is to be the test of adequate remuneration.

A Natural Right to the Land.

All rights in a state of society are artificial. It might as well be said he had a natural right to a box at the opera.

A Possible Cause.

It would be absurd to hold a vessel liable for a collision on a bright day because she had not a fog-horn on board.—*The Duke of Buccleuch* [1891] (A. C. 313).

The Wisdom of Many and the Wit of One.

What are maxims but the expression of that which good sense has made a rule?—*Smith* v. *Baker* [1891] (A. C. 344).

There is no such thing as abstract duty.—*Smith* v. *Baker* [1891] (A. C. 346).

Volenti non fit.

I do so hold (that a master may carry on his work in a dangerous way and damage his servant) if the servant is foolish enough to agree to it. This sounds very cruel. But do not people go to see dangerous

sports? Acrobats daily incur fearful dangers, lion-tamers, and the like. Let us hold to the law. If we want to be charitable, gratify ourselves out of our own pockets.—*Smith* v. *Baker* [1891] (A. C. 346).

A "Narrow" Construction.

No case is desperate when plain words may be disregarded. I deprecate this (that words mean something different from what they say) in all cases.—*McCowan* v. *Baine* [1891] (A. C. 411).

This beats Me.

But then it is said. . . that Petridi and Co. are not fictitious nor non-existent, that they exist in the flesh, yet they are fictitious quâ payees, constructively fictitious. That if Vucina had drawn the bill Petridi was real and existent, but inasmuch as Glyka did not mean Petridi to have the bill he was non-existent. This beats me.—*Bank of England* v. *Vagliano* [1891] (A. C. 138).

A Termagant Wife: What to do with Her.

Chain her up (facetiously).

Constructive Corruption.

I think that that and similar expressions are only used by persons who have a desire to bring about a certain result and do not know how to do so by the use of ordinary and intelligible expressions.—*Adams* v. *Great North of Scotland Railway Co.* [1891] (A. C. 48).

The Pre-Judicature Acts Age.

Really I do not think any argument can be founded upon what I may take the liberty now of calling the preposterous condition of things that existed in England before the Judicature Act, where one Court gave a final judgment finding a debt due or damages due or

what not, and another Court with the same judge said: "Well, that is all very well, I gave judgment for you yesterday and it was perfectly right in point of law, but if you, the plaintiff in whose favour I gave it, enforce it, I will put you in prison." I think that some twenty or thirty years hence, when the present generation of lawyers has ceased to exist and there is another one, it will scarcely be believed that such a state of things did exist in a civilised country.—*Nouvion* v. *Freeman* (15 App. Cas. 15).

Judge made Law.

However my noble and learned friend opposite says, and the judges in the Court below have said what the law is, and therefore one may take it upon the sort of argument which was used when none other could be found, and say according to the Norman-French maxim: "C'est un ancien positive ley del Corone," independently of all reasoning upon the matter.—*Tancred* v. *Steel Co. of Scotland* (15 App. Cas. 140).

Inviolability of Written Instruments.

An addition to or abstraction from or alteration of a written instrument ought never to be made without almost a necessity for so doing; never except to avoid some absurdity or repugnancy.—*Muirhead* v. *Muirhead* (15 App. Cas. 306).

Habeas Corpus Appeals.

However, as has been said, we have got on without such appeals hitherto and might continue to do so and thrive.—*Cox* v. *Hakes* (15 App. Cas. 523).

Missions to Heathen—Charity or Benevolence.

I think there is some fund for providing oysters at

one of the Inns of Court for the Benchers; this, however benevolent, would hardly be called charitable; so of a trust to provide a band of music on the village green.—*Income Tax Commissioners* v. *Pemsel* [1891] (A. C. 565).

Letting Room for Blasphemous Lectures.

It is strange that there should be so much difficulty in making it understood that a thing may be unlawful in the sense that the law will not aid it, and yet that the law will not immediately punish it.—*Cowan* v. *Milbourn* (L.R. 2 Ex. 236).

The Bailiffs at Hampton Court.

It is not necessary to protest one's desire to protect the Queen's prerogative, but it seems to me with great respect that the prerogative is safer and more revered when it is not pushed to an unreasonable extent, as I confess I think it would be if it were held to give some privilege to the bricks and stones of Hampton Court Palace to protect a debtor from the lawful process of his creditor.—*Att.-Gen.* v. *Dakin* (L.R. 2 Ex. 296).

Solitaires.

A pair of things called solitaires explained to us to mean articles which may be used as studs to fasten the wristbands of a shirt.—*Ryder* v. *Wombwell* (L.R. 3 Ex. 95).

Infants' Contracts.

It is not a law for the indemnity and defence of the infant who is sued merely; it is a law to deter people from trusting infants and so save them from the consequences of the improvidence and inexperience of their age, an improvidence which would lead them into loss,

though all their dealings were with honest people, an inexperience which causes them to be no match for rogues.—(*Ibid.* 98.)

Jumpers and the "per quod."

Suppose the defendants had covenanted with the plaintiff under seal to carry her to a particular place and to provide proper means of exit from the carriage, and that the plaintiff declaring upon the covenant alleged a breach of contract and then went on to say, "per quod I jumped from the carriage and in so doing hurt myself." Would that be a per quod? Would it be damage legitimately flowing from the breach of contract? I think not.—*Siner* v. *Great Western Railway* (L.R. 3 Ex. 154).

Judicial Loyalty.

I think it an unbecoming thing as a rule in those who have the administration of the law to speak disrespectfully of it, but I feel justified in making an exception in the case of this unhappy Act of Parliament (Bankruptcy Act, 1869) which is no longer law, and has not been repealed for its merits.—*Hill* v. *East and West India Dock Co.* (9 App. Cas. 465).

"Golden" Rules.

Although I heard Crompton, J., say in reference to it (Lord Wensleydale's rule for the construction of Statutes) that he did not set any value upon any golden rule, that they were all calculated to mislead people.—(9 App. Cas. 464).

Probabilities.

Alexander must have been working at manual labour when he was at least 112 years old. He must have

remained unmarried till he was at least 75 years of age and then eloped with a young woman, and had a child when he was at least 95.—*The Lovat Peerage* (10 App. Cas. 803).

Bill of Lading a Receipt, not a Contract.

These distinctions are of a verbal character and not perhaps of much consequence; but I am strongly of opinion that precision of expression is very desirable, and had it existed in such cases as the present there would not have been the contradictory opinions which have been given.—*Sewell* v. *Burdick* (10 App. Cas. 105).

"Error latet in generalibus."

Laying down general propositions is attended with the same danger as giving definitions.—*Darley Main Colliery Co.* v. *Mitchell* (11 App. Cas. 144).

Corporations and Malice.

I am of opinion that no action for a malicious prosecution will lie against a corporation. A corporation is incapable of malice or motive.—*Abrath* v. *North Eastern Railway Co.* (11 App. Cas. 250–1).

Private Prosecutors.

A prosecutor is a very useful person to the community. We have something in the nature of a public prosecutor, but everybody knows that the greater number of prosecutions in this country are undertaken, not by the State, but by private persons. One may venture to quote Bentham even upon this matter. He said that laws would be of very little use if there were no informers.—(11 App. Cas. 252.)

Ultra Vires and Rules.

Still, however doubtful the parentage, there is its offspring the County Court rule, which I must now consider.—*Poyser* v. *Minors* (7 Q. B. Div. 337).

The Uncertainty of the Law.

What is said to be the uncertainty of the law is in truth an uncertainty of facts or an uncertainty of ill-drawn instruments.—*Johnson* v. *Raylton* (7 Q. B. Div. 446).

The Privilege of the Witness Box.

Suppose while the witness is in the box a man were to come in at the door, and the witness were to exclaim, "That man picked my pocket!" I can hardly think that would be privileged.—*Seamen* v. *Netherclift* (2 C. P. Div. 60).

The Rushers and the Crushed Thumb.

All that the public has a right to expect, all that the defendants undertake for, is that which is consistent with practically working the railway. . . . How can the porter see that a carriage into which people are getting is full? It would be very desirable that the jury at least should be put to do the porter's work for a week. —*Jackson* v. *Metropolitan Ry. Co.* (2 C. P. Div. 133).

The Press.

The world is governed by public opinion, and public opinion is formed chiefly by means of the public press, and of the periodical public press especially.—*Purcell* v. *Sowler* (2 C. P. Div. 222).

A Pet Point.

Let us for a moment forget that the defendants are a *caput lupinum*—a railway company.—*Parker* v. *S. E. Ry. Co.* (2 C. P. Div. 427).

The Perfection of Reason.

Now I have too much regard for the Common Law not to prefer it and its judges to all other, but I cannot think it is desirable it should have such a duty as this put on it. (Mandamusing a bishop who has exercised his discretion under s. 3 of the Church Discipline Act, 1840.)—*Queen* v. *Bishop of Oxford* (4 Q. B. Div. 552).

Lord Denman.

We always used to notice he became uneasy when a real point of law turned up.—*Times' Memoir.*

Un bon histoire.

It has been well said that if a story is not good except it is true, it is not good at all.

Insanity.

Insanity is not a privilege but a misfortune. It must not be allowed to injure innocent persons.—*Drew* v. *Nunn* (4 Q. B. Div. 668).

The Employers' Liability Act—A Prophetic Utterance.

I foresee a frightful crop of litigation if it passes.

Stock Exchange Gambling.

It may be a sad thing that there should be gambling upon the Stock Exchange, but that is not the point which we have to consider, and I am not sure that it is a disadvantage that there should be a market where speculation may go on, for it is owing to a market of that kind that we now have so many railways and other useful undertakings.

A Corporation's Conscience.

A corporation cannot have the *mens rea*.—*Pharma-*

ceutical Society v. *London Supply Association* (5 Q. B. Div. 313).

Trades Union and Intimidation.

No right of property or capital, about which there has been so much declamation, is so sacred or so carefully guarded by the law of this land as that of personal liberty.—*Reg.* v. *Druitt* (10 Cox C. C. 600).

Civil versus Criminal Law.

It is a good rule in criminal jurisprudence not to multiply crimes; to make as few matters as possible the subject of criminal law, and to trust, as much as can be, to the operation of the civil law for the prevention and remedy of wrongs.—*Reg.* v. *Middleton* (12 Cox C. C. 426).

The Simplicity of the Common Law.

Obtaining goods by false pretences was no offence at common law. Cheating was not.—*Reg.* v. *Middleton* (12 Cox C. C. 426).

I think the criminal law ought to be reasonable and intelligible. Certainly a man who had to be hung owing to this distinction (the *dominus* of the thing stolen being *invitus* or not), might well complain.—*Reg.* v. *Middleton* (12 Cox C. C. 429).

The Garrotting Scare.

In the Court of Old Bailey, 'twas Bramwell that spoke:
"The Crown can't allow all these crowns to be broke;
So let each skulking thief who funks justice and me
Just attend to the warning of bold Baron B.

Just hand me my notes and some ink for my pen,
And gaoler look sharp and bring up all your men;

Under five years of servitude none shall go free,
For it's up with the dander of bold Baron B."

Punch.

The Stakeholder and the Prize Fight.

He was not accessory to the manslaughter. Assuming that as a stakeholder he was *causa sine qua non*, yet he was not *causa causans*. Did he abet the fight?—*Reg.* v. *Taylor* (13 Cox C. C. 69).

The Peculiar People.

The prisoner thought it irreligious to call in medical aid (to his child), but that is no excuse for not obeying the law. The 31 and 32 Vict. c. 122, s. 37, has imposed a positive duty on parents, whatever their conscientious or superstitious opinions may be.—*Reg.* v. *Downes* (13 Cox C. C. 116).

Thinking an Abducted Girl over Age.

Could a person charged with burglary claim an acquittal on the ground that he believed it was past 6 a.m. when he entered?—*Reg.* v. *Prince* (13 Cox C. C. 143).

A Competent Paymaster.

If people go out of their way to secure a defendant better able to meet their claims than the actual causer of their injury, they must do so at their own risk.—*Rowe* v. *London Pianoforte Co.* (13 Cox C. C. 216).

Charging at Football.

No rules or practice of any game whatever can make that lawful which is unlawful by the law of the land, and the law of the land says you shall not do that which is likely to cause the death of another.—*Reg.* v. *Bradshaw* (14 Cox C. C. 84).

The Good Old Times.

At common law there was no limit to the duration of imprisonment, except that there was a general principle laid down in Magna Charta and recognised in the Bill of Rights, that punishments must not be excessive.—*Reg.* v. *Orton* (14 Cox C. C. 460).

Leaving Special Jurors out of Common Jury Lists.

It is outrageous, I was going to say, that you should take the best men and leave them out of a jury who are to try a man for his life, and try a trumpery running down case or an action on a bill of exchange for £50 with picked men.—(22 *Sol. J.* 472.)

Overshooting a Platform.

A man hits the target ninety-nine times in a hundred, the hundredth time he fires wide of it. Is the legitimate conclusion that he is a bad shot, or that he was careless in the last firing? Neither. Yet, when the driver (of a train) overshoots the platform a few yards once in a thousand times there is evidence of negligence, and the company is fined.—(24 *Sol. J.* 783.)

To an American Admirer.

I can assure you I am very glad to have the good opinion of lawyers on your side of the water, none the less that they are young. I may, without vanity, say that all the "young ones" at our bar consider me their particular friend.—(25 *Sol. J.* 813) [1881].

Protection.

Is protection to be argued over again?

Limited Liability.

I think there never was a more perfect success than the Act of Parliament establishing the law of limited liability.

The Glasgow Bank.

Just consider that horrible Glasgow Bank case. I declare I have often thought that there has been many a small pitched battle that has caused less misery than that bank did to its shareholders.

The Sages of the Commons.

If ever the time should come when the country, impressed with the wisdom of the House of Commons, with the gravity, dignity, and decorum of its debates, with the mutual respect entertained by each part of it for the other, should determine that legislation should be confined solely to the sages there assembled, then indeed the Lords should be silenced. They will not be before.

Ave atque vale.

You, the bar of England—a body whose good opinion I declare I value more than any other body of men in the kingdom.—*Banquet on Retirement.*

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